

**SOUTH CAROLINA DEPARTMENT OF LABOR, LICENSING & REGULATION
BEFORE THE SOUTH CAROLINA REAL ESTATE COMMISSION**

IN THE MATTER OF:

Queen G. Linen,

License Number REL17700 (BIC)

Case # 2012-146 & 2014-9

Respondent.

FINAL ORDER

This matter came before the South Carolina Real Estate Commission ("Commission") on July 16, 2014, as a result of the Notice of Hearing and Formal Complaint which was served upon the above named licensee ("Respondent") on June 12, 2014. A quorum of Commission members was present. The Hearing was held pursuant to S.C. Code Ann. §§ 40-1-70(6) and 40-57-60(2) (1976, as amended), and the provisions of the Administrative Procedures Act, S.C. Code Ann. § 1-23-10, *et seq.* (1976, as amended). Lauren Kearney, Assistant Disciplinary Counsel, represented the State. The Respondent was not present and was not represented by counsel. At the conclusion of the July 16, 2014, hearing the Board orally indicated a ruling against the Respondent and imposed sanctions. On July 17, 2014, prior to the written order being issued, the Respondent asked for reconsideration of the Board's ruling and sanctions imposed.

Respondent's request for reconsideration was heard by the Board on September 17, 2014. A quorum of the Board was present. The State was represented by Lauren Kearney, Assistant Disciplinary Counsel. Respondent was present and she was not represented by counsel. The State submitted documentation which provided that Respondent was properly served on June 12, 2014, with a notice of hearing and formal complaint for the July 16, 2014, hearing via certified and regular mail at her address of record. The State acknowledged at both hearings that Respondent changed her address on July 1, 2014, when she renewed her license. A scrivener's error in Respondent's address was noted by the State on the inside letter of the notice of hearing and formal complaint sent to the Respondent via certified mail, but the green card was properly addressed and returned unclaimed. The notice of hearing and formal complaint sent through the USPS mail to the Respondent at her address of record on June 12, 2014, was not returned. Respondent testified that she did not realize that she was supposed to be at the hearing on July 16, 2014. She testified that she had moved around because of problems with her house and she was not getting her mail. The State referenced an email received from the Respondent the day after the July 16, 2014, hearing in which Respondent acknowledged receiving the notice of hearing and formal complaint, but did not read it until after the hearing on July 16, 2014, was held. The Board denied Respondent's request for reconsideration of its oral ruling and sanctions issued on July 16, 2014, because the Respondent was properly served on June 12, 2014, with the notice of hearing and formal complaint at her address of record.

In Case Number 2012-146, Respondent was charged with violation of S. C. Code Ann. §§40-35-135(A) (6) and (B) (7) (a) and (f) and 40-57-145(A) (4) (1976, as amended). In Case

Number 2014-9, Respondent was charged with violation of S.C. Code Ann. §§ 40-57-145 (A) (4) and (10) and 40-57-135 (B) (4) and 40-1-110 (1) (f) (1976, as amended).

Witnesses

1. John Sowell, South Carolina Labor, Licensing and Regulation ("LLR") Investigator
2. Kevin Culles, Broker-in-Charge for Turnkey Realty (Complainant in 2014-9)

Exhibits

- State's Exhibit 1: Notice of Hearing, Formal Complaint, Certificate of Service and USPS Tracking
- State's Exhibit 2: Case Number 2014-9- Contract of Sale
- State's Exhibit 3: Case Number 2014-9- Addendum to the Contract of Sale and copy of the earnest money check dated November 16, 2013.

FINDINGS OF FACT

1. Respondent at all time relevant was licensed by the Commission as a Broker-in-Charge and the Commission has jurisdiction over the Respondent and the subject matter of these actions.

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2. Around October 2011, while working as the Broker-in-Charge of Royal Realty, Respondent represented a buyer (Buyer A) in a prospective purchase of a residence at 104 Ashewood Commons, Columbia, South Carolina.
3. On September 26, 2011, the Respondent's buyer A and the seller of the residence executed a Contract of Sale, which required a \$500.00 earnest money deposit. Buyer A gave Respondent a personal check (#1043) dated October 4, 2011, in the amount of \$500.00 to serve as the earnest money deposit.
4. The transaction failed to close and Respondent requested that the listing agent (Complainant) have the sellers sign a Release of Earnest Money form. The sellers refused to sign the release as they felt entitled to the buyer's earnest money.
5. Investigator Sowell testified that he met with Respondent at her office to audit her files. Respondent had only a small deposit book to prove she deposited the earnest money in her account and she did not have monthly statements and reconciliations. Investigator Sowell testified that Respondent did not have any accounting procedures in place.

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6. Around October 2013, while working as the Broker-in-Charge of Royal Realty, Respondent represented a buyer (buyer B) in the purchase of two commercial lots in the Columbia area.
7. On October 16, 2013, buyer B and the seller of the lots executed a Contract of Sale, which called for an earnest money deposit of \$250.00. The Contract of Sale indicated that Turnkey Realty (Complainant) would serve as the escrow agent.
8. On November 15, 2013, the parties executed an Addendum to the Contract of Sale to extend the closing date to November 22, 2013. The Addendum required an additional \$500.00 earnest money deposit.
9. On November 17, 2013, buyer B wrote a check payable to Complainant and gave said check to Respondent.
10. Kevin Culles, Broker-in-Charge with Turnkey Realty, testified that he never received the \$500.00 check from the Respondent and tried for a month and half to get the check. He testified that he eventually got a check for \$500.00 in June, 2014. He testified that the transaction failed to close and a Release of Earnest Money form was signed that released the \$750.00 earnest money to the seller.
11. Investigator Sowell testified that he interviewed the Respondent and Respondent stated that she had the check, but could not offer a reasonable explanation for refusing to forward the check to Turnkey Realty. Investigator Sowell testified that he advised the Respondent to release the check as soon as possible, but when he checked with Turnkey Realty, they had still not received the check from the Respondent.

CONCLUSIONS OF LAW

Based upon careful consideration of the facts in this case, the Commission finds and concludes as a matter of law that:

1. The Commission has jurisdiction in this matter under S.C. Code § 40-57-60 (2), and, upon finding that a Respondent has violated the statutes or regulations of the Commission, the Commission has the authority to order the revocation, suspension, or cancellation of a license to practice. Additionally, the Commission may assess a fine and impose a public reprimand. Upon a determination by the Commission that discipline is not appropriate, the Commission may issue a non-disciplinary letter of caution. S.C. Code Ann. §§ 40-57-150 and 40-1-120.

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2. The State met its burden of proving a violation of S.C. Code Ann. §40-57-135 (A) (6) (1976, as amended) in that Respondent failed to ensure that accurate and complete records were maintained for real estate trust accounts.
3. The State met its burden of proving a violation of S.C. Code Ann. §40-57-135(B)(7)(a) (1976, as amended) in that Respondent failed to maintain a recordkeeping system consisting of a journal or an accounting system which records the chronological sequence in which funds are received and disbursed for real estate sales. For funds received, the journal or accounting system must include the date of receipt, the name of the party from whom the money was received, the name of the principal, identification of the property, the date of deposit, the depository, the payee, and the check numbers, dates, and amounts. A running balance must be maintained for each entry of a receipt or disbursement. The journal or accounting system must provide a means of reconciling the accounts.
4. The State met its burden of proving a violation of S.C. Code Ann. §40-57-135(B) (7) (f) (1976, as amended) in that Respondent failed to have a recordkeeping system consisting of a monthly reconciliation of each separate account. The reconciliation must include a written worksheet comparing the reconciled bank balance with the journal balance and with the ledger total to ensure agreement.
5. The State met its burden of proving a violation of S.C. Code Ann. §40-57-145(A) (4) (1976, as amended) in that Respondent demonstrated incompetency in a manner as to endanger the interest of the public.

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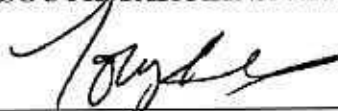
6. The State met its burden of proving a violation of S.C. Code Ann. §40-57-145(A) (4) (1976, as amended) in that Respondent demonstrated bad faith, dishonesty, untrustworthiness, and/or incompetency in a manner as to endanger the interest of the public.
7. The State met its burden of proving a violation of S.C. Code Ann. §40-57-145(A) (10) (1976, as amended) in that Respondent failed, within a reasonable time, to account for or to remit any monies coming into her possession which belong to others.
8. The State met its burden of proving a violation of S.C. Code Ann. §40-57-135(B) (4) (1976, as amended) in that Respondent failed to deposit a check within forty-eight hours after acceptance of an offer by the parties to the transaction.
9. The State met its burden of proving a violation of S.C. Code Ann. §40-1-110(1) (f) (1976, as amended) in that Respondent committed a dishonorable, unethical, or unprofessional act that is likely to deceive, defraud, or harm the public.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that:

1. Respondent shall be issued a public reprimand.
2. Respondent's license shall be on probation for one (1) year.
3. Respondent shall pay a penalty of five hundred (\$500.00) dollars for each violation for a total penalty of Four thousand (\$4,000) dollars for eight (8) violations. This penalty shall be paid within ninety (90) days of the date of this Order.
4. Respondent shall be required to complete a thirty (30) hour Broker-in-Charge course which includes a trust account course. Proof of completion of this thirty (30) hour requirement must be submitted to staff within ninety (90) days of the date of this Order.
5. Should Respondent fail to comply with the terms and conditions of this order, Respondent's license may be administratively suspended pending compliance or further order of this Board.
6. This Final Order shall take effect upon service of this Order on the Respondent.

AND IT IS SO ORDERED.

SOUTH CAROLINA REAL ESTATE COMMISSION



Tony K. Cox, Chairman

September 24, 2014.